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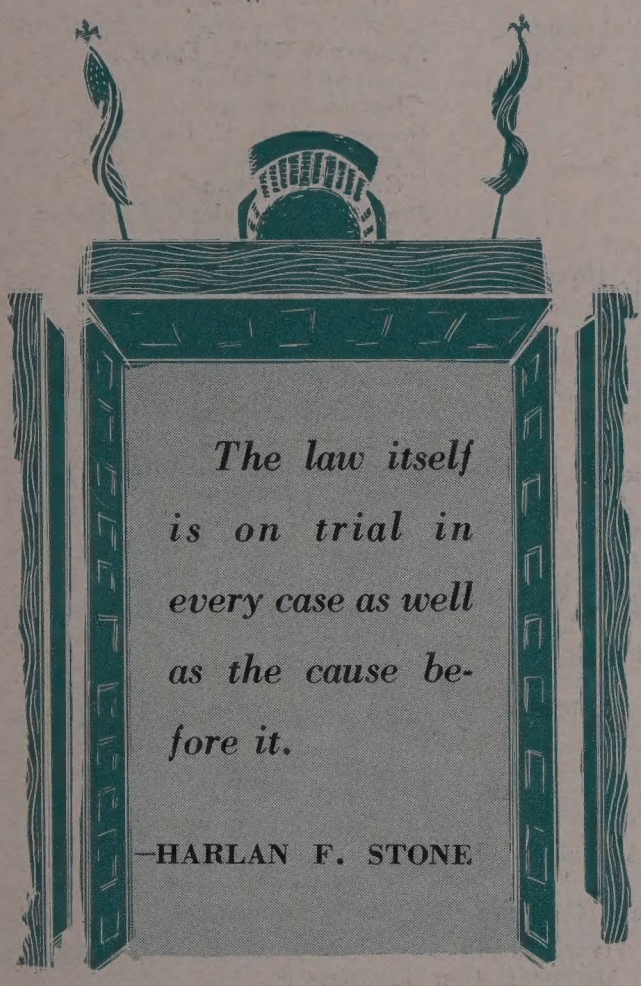

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The American Judicature Society

TO PROMOTE THE EFFICIENT ADMINISTRATION OF JUSTICE

Founded in 1913 by Herbert Lincoln Harley

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Journal of The American JUDICATURE *Society*

Vol. 39, No. 2

August, 1955

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A Ministry of Justice

By ALBERT J. HARNO

"I *WOULD* exhort the student," said Justice Joseph Story, in his inaugural address as Dane Professor in the Harvard Law School, "at the very outset of his career, to acquire a just conception of the dignity and importance of his vocation." Let him not debase it, he admonished, "by a low and narrow estimate of its requisites or its duties." In the usual course of a lawyer's work, it is true, he went on to say, "that sound learning, industry, and fidelity are the principal requisites . . . but there are some, and in the lives of most lawyers many occasions, which demand qualities of a higher, nay, of the highest order. Upon the actual administration of justice in all governments, and especially in free governments," he emphasized, "must depend the welfare of the whole community." In this letter I wish to examine with you some of the high qualities required of lawyers, and some of the responsibilities imposed on them which, when conceived and executed with insight and vision, impress dignity and importance on our vocation. And in this context I wish particularly to explore the status and function of a modern law school.

The place assigned by Judge Story to the administration of justice as a contributing factor of the highest import to the welfare of a people should be taken as a major premise in this discussion. "Justice," said Webster, "is

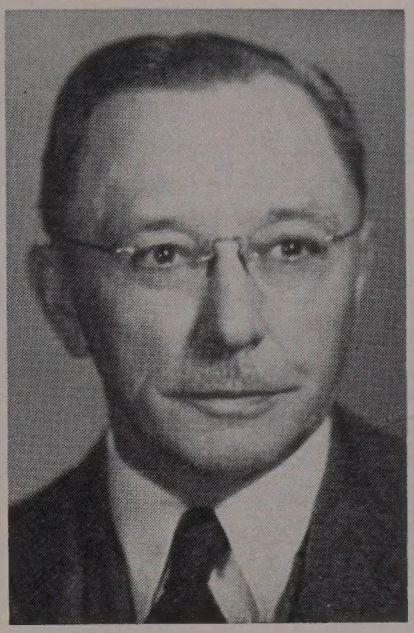
the great interest of man on earth." Possibly some might take exception to Webster's statement and they might stress instead religion or medical or physical science. But no discerning individual can, I believe, fail to designate the orderly administration of justice as a hallmark of a civilized community. "While civilization," observed Chief Justice Vanderbilt, "has survived in bygone eras without science, there never has been a civilization that has survived without a system of law adapted to its peculiar needs." Today it is the responsibility of the American lawyer to establish and administer efficiently a legal system peculiarly adapted to the needs of the American people. Do we not all accept these premises? We, the American people, adhere to the idea, which is basic to a conception of all our institutions, that ours is a nation governed by law. And we of the legal profession subscribe to the view that it is the responsibility of the profession to keep our legal house in order. But somehow, as I have indicated on another occasion, we, the American people, and we of the profession have not quite envisioned the evolutionary characteristics of law: that law must adapt itself to the emerging needs of a society which is ever in the process of change; that law which is not responsive to these emerging needs tends to become no more than a set of rules that do not govern well. Law that governs well must, indeed, have stability – it must have enduring qualities; but it must also be adaptable to a changing environment. It follows that, as laws become obsolete and other laws are added without a systematic evaluation of the overall structure, popular dissatisfaction with our legal system tends to become articulate, and when felt needs for better laws and better law administration remain unrequited, popular discontent leads to a breakdown in law enforcement.

And it is here that we, the American people, and more particularly we of the legal profession, have fallen short in carrying our responsibilities. Not only have we fallen short but the weight of our task is becoming more onerous day by day. It is impossible in the confines of this letter to give an adequate description of the current legal scene, but with you as my audience that is unnecessary. All of us must be struck, as Vanderbilt has so aptly described this scene, "with its vast number of judicial decisions, its forest of statutes and its jungle of administrative law, both state and federal – all primary authority which we dare not neglect if we would know the law – not to mention the wealth of interpretive commentary from writers with varying degrees of persuasiveness."

Over the years many individuals – judges, lawyers, law teachers, and laymen – have expressed concern about this situation and there is abundant literature on it. The keynote of this literature is: We must find a way out of this morass, if a way there be; the alternative is continuing confusion in our law and, ultimately, a bogging down of all the processes of law administration. We must not assume that nothing has been done about this problem. The courts, in their decisions, occasionally blaze a new trail in the law, but the courts, as Holmes has said, make law only interstitially. One promising development in the judicial area relates to the organization and work of judicial councils and the holding of judicial conferences. The profession and legislative bodies have conceived and set up committees and commissions, some of which have performed valiantly, but too often their work is piecemeal. In a number of states, through legislative action, agencies have been established, with varying assignments and emphases, for law improvement. New York, for example, has a law revision commission which has done some outstanding work. Louisiana has a state law institute, and Wisconsin has a revisor of statutes. A number of states, including Illinois, now have legislative reference bureaus and legislative councils. Another body which for years has done excellent work is the National Conference of Commissioners on Uniform State Laws. Through the legislation it has drafted and for which it has secured adoption in the various states, much of the conflict of laws

that otherwise would have arisen has been allayed.

Bar associations too are alert to this problem. In Illinois, through the work of committees of the Illinois State Bar Association and the Chicago Bar Association, substantial programs in law revision and reform have been achieved. Often the two organizations have worked cooperatively through joint committees. The members of these committees have devoted their energies freely and unstintingly to these projects. Their efforts have resulted in an Insurance Code, a Corporation Act, a Probate Act, a Practice Act, this year a revised Practice Act, and numerous other legislative acts. And here we must not overlook the role of the legislature, for without legislative adoption these programs would come to naught.



ALBERT J. HARNO, president of the American Judicature Society, is dean of the College of Law of the University of Illinois. Every year he writes a "Letter to the Law Alumni of the University of Illinois." This is the 1955 letter, distributed last month.

On the national level the American Bar Association likewise is active. In fact it was a vision for service – service aimed at revising and improving our laws and their administration – that caused that Association to bring the idea of a great research and library center into its recent building program. A fine catalytic force for improvement in the administration of justice is the American Judicature Society, and many movements for better laws and their administration were given their first impetus by that organization. Another national agency for law improvement is the American Law Institute. For over thirty years the Institute has been a mighty force for the public good, working in some areas on restatements of the law and in others on the drafting of model legislation.

What I am giving you is but a panoramic view of the various agencies which are at work. All are stimulated into action through an awareness on the part of the profession of our legal morass and the implications which that morass holds for the profession and for the public, and all these programs are conceived to improve the situation. They represent noteworthy developments. But splendid as these developments are, they are not equal to the task before us. The manner in which the studies are projected betrays also their limitations. They are conceived in piecemeal and they are wanting in unity and comprehensiveness. "As things are," said Pound, "there is no continuity in the work of the several agencies . . . and no relation of the work of any one of them to the others; there is not adequate continuous and comprehensive study of the local law and local administration of justice in the light of the general law and the general administration of justice; . . . there is no assured investigation to see that what is done with one end solely in view does not undo or thwart what was long established and well working with another end in view."

Is there then no solution to this problem? Is there nothing more we can do than to await the time when this quagmire of laws engulfs us? It is questions such as this that have prompted discerning judges and lawyers, both in this country and in England, to advocate the establishment of a ministry of justice. What is a ministry of justice? There have been various descriptions of it. Justice Cardozo has explained it in these simple words. "The duty must be cast on some man or group of men," said he, "to watch the law in action, observe the manner of its functioning, and report the changes needed when function is deranged." Years ago Bentham reorganized the need for this agency and urged that it be established. "Why," inquired Lord Westbury in 1857, "is there not a body of men in this country

whose duty is to collect a body of judicial statistics, or in more common phrase, make the necessary experiments to see how far the law is fitted to the exigencies of society, the necessities of the times, the growth of wealth, and the progress of mankind?" Again in 1918 Lord Haldane advocated the creation of this agency. In the United States, where the need for a ministry of this sort is much greater than in England, its establishment has been urged by numerous judges, lawyers, and law teachers, including Dean Pound, Justice Cardozo, Chief Justice Stone, and Chief Justice Vanderbilt. Justice Cardozo's article on this subject, written in 1921, resulted in the organization of the Law Revision Commission in New York.

All individuals who have seriously considered the organization of a ministry of justice are agreed: The ministry must have continuity. Definitely it should not be an *ad hoc* body; it should not have special assignments; it should be the watchdog over all the law. From this we may take it that each state of the Union and the federal system could profit through the setting up of an agency of this sort. The ministry would, of course, have research assistants and they would be given special assignments, but as Justice Cardozo has visualized it, the members of the ministry would watch over the whole field of the law, observe the law in action, make studies, and report changes needed when function is deranged. The ministry would have no power to make changes in the law. It would report needed changes. Report to whom? Obviously to those who have the power to initiate changes — to the courts and the legislatures.

How should a ministry of justice be organized? Should it have official status? Some think that it should, but others, and their reasons are cogent, are opposed. Lord Birkenhead stressed the view that legal reforms must come through the conviction and the persistent efforts of the leaders of the bench and bar. Lord Chief Justice Hewart pointedly stated that there are dangers inherent in an official agency; that with the establishment of the office of Minister of Justice, that office sooner or later would be held by somebody who "might be described as a mere politician." The arguments are persuasive that the ministry should be composed of competent and devoted men without official status.

How this agency should be constituted is another pertinent question. Justice Cardozo expressed the view that a single committee of not less than five in number should be organized as a ministry of justice. There should be representatives, not less than two, he thought, "perhaps even as many as three, of the faculties of law or political science" from the universities. "Hardly elsewhere," he commented, "shall we find the scholarship on which the ministry must be able to draw if its work is to stand the test," and there should be on it representatives of the bench and bar. "What instrumentalities have we available for this tremendous task?" inquired Chief Justice Vanderbilt. His answer was the law faculties. He conceded that we cannot turn for help to the law schools as most of them are presently organized. "Nevertheless," he went on to say, "the law school faculties have the best available core of legal knowledge . . . and they have the best available environment for doing such a job." Our goal, commented the *American Bar Association Journal* editorially, "is to make the law a more perfect instrument for meeting the imperative needs of a war-shocked society in a new world. . . . The lawyers of the country are girding for battle, and forming ranks. They look to our law schools for leadership." Dean Pound has been even more specific. "There is need of a ministry of justice," said he, "to study the law in action. . . . In short there is need of an agency, continuously at work, to advise legislators as to measures needed or urged and apply competent study and investigation to the perennial and persistent problem of improving the law. Here, I submit," he concluded, "is a task worthy of and calling for the learning and experience and considered study of the faculty of law of a state university. It calls for all that qualifies them to be law teachers."

All this leads to a highly pertinent question, one that I foreshadowed at the beginning of this letter: What is the business of a modern law school? One answer is that it has the responsibility to prepare its students for the legal profession. But how should it prepare them? Is it sufficient if it educates them in the theory of the law, trains them in the skills of the craft, and inculcates them with the traditions and ethics of the profession? Further, has a law school fulfilled its task when it has provided a legal education for its students? Legal scholarship centers today in the law schools and, in that area, the profession looks to the schools for guidance and leadership. Clearly, productive scholarship must be included among the responsibilities of a modern law school.

"The business of a law school," stressed Justice Holmes, "is not sufficiently described when you merely say that it is to teach law, or to make lawyers. It is to teach law in the grand manner, and to make great lawyers." On casual reading this statement may appear to be more rhetorical than of substance. In truth, Holmes has defined a goal toward which all law schools should strive. Dean Pound has amplified Holmes' words. "To teach law in the grand manner," Pound explained, "means also to raise up lawyers as conscious members of a profession; as members of an organized body of men pursuing a common calling as a learned art in the spirit of a public service – no less a public service because it is incidentally and so only secondarily a means of livelihood." Pound went on to say, "A law school which is part of a university has a task of research as well as one of teaching." And then, in speaking of the responsibilities of a state university law school, he charged it with a specific task. "I venture to think," said he, "that the law school of a state university has an even broader task. I look forward," he concluded, "to seeing its faculty take on at least a great part of the work of a ministry of justice for the state which maintains it."

Our Law School has a proud record of achievement in teaching and scholarship. In the area of research directed toward the clarification of the law and its development as a system, it has achievement which, I believe, no other law school has excelled and perhaps none has equaled. Much of the scholarly production of our staff members has come about through individual research and that must always be an important part of the work of a faculty. A substantial part of the work of the staff, serving as members of committees of the organized bar, has been in the contributions they have made to law improvement. It is here that there has been a real approach, in objectives and working arrangements, to the ministry of justice idea. It must not be taken that a law school should ever look upon its staff as the sole members of a ministry of justice. A ministry of justice must necessarily be made up of dedicated men from the bench and bar and from the teaching profession. Men so grouped, experience has shown, are the best working teams for law improvement. A law school can provide scholarship for these undertakings; it can be the nucleus from which these programs are generated, give unity, continuity, and comprehensiveness to them, and furnish the environment for them. To the performance of these functions, our Law School dedicates itself.

We have had substantial experience for these tasks. We have accomplishments to our credit. We believe we can and will accomplish a great deal more. With our new building, which is nearing completion and which we expect to occupy in September of this year, we shall have a much improved environment in which to work. We look forward with confidence that this Law School can and will become, in a true sense, a ministry of justice for our State.

ALBERT J. HARNO

Urbana, Illinois
July, 1955

It's Time For the Coroner's Post-Mortem

By GLENN W. FERGUSON

NEXT to the sheriff, the coroner is the oldest judicial officer in the Anglo-American legal system. The office is of such ancient origin that even the century of its creation is disputed. The Articles of Eyre of 1194 provided that the justices should select four individuals to safeguard the pecuniary interests of the king. As the designated representatives of the king or crown (corona, hence coroner), their duties were varied and extensive. "They had ministerial duties, as the keeping of records to be used by the justices in eyre in their searching inquiries; they had magisterial duties, as the causing of persons to be arrested; they had executive duties, as the issuing of process when the sheriff was disqualified; and finally, they had judicial duties, as the holding of inquests to determine the Crown's interest with respect to wrecks, royal fish, treasurer trove, and unexplained death."[1] Under the early English law, the chattels of men who committed suicide or received a sentence for a felony were forfeited to the crown. The coroner served as the collection agent. In addition, it was his duty to examine and dispose of bodies of people who fell in public places or along the roads, and according to the law, he could legally claim for the crown whatever of value was found on the body.

As the power of the English king was gradually curtailed, the coroner's office degenerated from its early prominence to that of a minor local official charged with the responsibility of holding inquests in deaths occurring under violent, unnatural or suspicious circumstances. The decline of the power and prestige of the coroner's office began in the fourteenth century, and in the course of time, the forfeiture of property on conviction of felony disappeared. As the coroner's fiscal duties were eliminated, he became more active in the prosecution of homicide cases, and in the eighteenth century Blackstone said, "The office and power of a coroner are also, like those of the sheriff, either judicial or ministerial; but principally judicial . . . (those duties consist) first in inquiring when any person is slain, or dies suddenly, or in prison, concerning the manner of his death."[2] This concept of the office of coroner was transplanted to the American colonies, and in the United States, today, we think of the coroner as an official whose primary duty is to investigate deaths occurring under unnatural or mysterious circumstances.

Determining the Cause of Death

The annual reports of the director of the bureau of the census reveal that approximately 10 per cent of all deaths in the United States result from violent or unnatural causes. Eighty per cent of these deaths result from accidents, 15 per cent from suicide and 5 per cent from homicide. In addition to the 10 per cent requiring official investigation, medical examiner reports in large metropolitan areas reveal that there is another 10 per cent surrounded by obscure causes

1. Cases and Materials on Legal Systems, William T. Fryer and Carville D. Benson, American Casebook Series, West Publishing Co., St. Paul, 1949, p. 933.

2. Cooley's Blackstone, Volume I, Third Edition, 1884, p. 347.

and unknown circumstances which also require analysis. For example, a cadaver may be found in an isolated hunting lodge or on a deserted ocean beach. The greater majority of these deaths can be attributed to natural causes, but the possibility of accident or violence is present, and they must be carefully examined in order to establish the cause of death. Thus it appears that approximately 20 per cent of all deaths in the United States involve circumstances which necessitate official investigation.

If these statistics remain stable, there are more than thirty-two million Americans now living who will die under violent or obscure conditions. The law of averages will decree that many of us will be subjected to death under mysterious circumstances. If we make our exit as the result of foul play, we want to be assured that the illegal act will be discovered and that the perpetrator will pay his debt to society. If our demise is the result of an accident, we want to be assured that the double indemnity provisions of our insurance policy will be available for our designated beneficiaries. From the point of view of our family and relatives, they will want to know of the cause of our death to facilitate their adjustment and to be certain that there is no physical condition which may have hereditary repercussions. For these reasons, it is manifest that an accurate finding of the medical cause of death is of major importance to the individual, his family and society.

"It is invariably the duty of the coroner or his official equivalent to conduct an inquiry to determine the cause and circumstances of deaths known or suspected to have resulted from criminal or negligent acts. The law usually requires that he go to the place where the body lies and take immediate charge of it. As a rule the law states that he shall view the body and the premises where it lies. In addition to viewing the body he may be empowered by law to perform or to have performed an autopsy if he, his jury or the county attorney decrees such a procedure necessary."[3] In most of the states, the coroner has well-defined legal functions in addition to the medical duties described above. He is authorized or required to impanel a jury, subpoena witnesses, administer oaths, take medical as well as non-medical evidence, deliver a verdict and issue a warrant for the arrest of individuals to be held for trial.

The Coroner System Today

In most of the 3,072 counties in the United States, the coroner is a county officer elected by popular vote of the county for a limited term of office. County practices within many states vary considerably making it difficult to generalize concerning state practice; however, the accompanying chart should provide an accurate view of prevailing state practices. In twenty-five states the office of coroner is authorized by statute, in eighteen by constitutional provision, in four by a combination of state statute and county home rule and in one state the office of coroner is authorized

DR. RICHARD FORD, Director of the Department of Legal Medicine at Harvard Medical School, explains the course of a bullet through a skull to two Massachusetts State Troopers. (Photo by Harry Saltzman, reprinted by courtesy of the Saturday Evening Post, Copyright 1949 by Curtis Publishing Company.)

by constitutional provision and by statute. In states where the coroner's office is governed by the constitution, the question of possible revision or abolition of the office is complicated by the necessity for constitutional amendment.

The method of selection varies considerably, but in thirty-eight states the coroner is elected by direct popular vote. In twenty-nine of these states, the coroner serves as an independent court officer, in seven local justices of the peace discharge the coroner's function, in one state the coroner's duties are handled by the county attorney and in one state the prosecuting attorney is awarded a double assignment. In the ten states where the coroner or medical examiner is appointed, three are appointed by superior or county courts, three by the Governor, two by the State Health Commissioner, one by the Attorney General and one by an independent commission.

The tenure of office is generally either two or four years, but four states stipulate a term of three years, one state five years, one state seven years, and in three states the term of the coroner is not mentioned.

Other than the conventional requirements of age, residence and citizenship, there are no additional prerequisites in thirty-eight states. In nine states the coroner or medical examiner is required to be a licensed medical doctor, and in one state the coroner must be a member of the bar.

In thirty-five states the coroner or medical examiner is compensated on a varying fee basis for each investigation completed. In eight states there is a combination of salary and fees, in three states a fixed salary is provided, in one state the coroner receives necessary expenses and in one state the payment of the coroner is not defined.

The Reform of the Coroner System

For more than a half a century, the coroner system in the United States has been condemned by individual writers, independent commissions and professional organizations. In the 1870's a common practice of Massachusetts coroners was brought to the attention of the public resulting in widespread indignation. A county coroner found the body of a small child floating in a river. The coroner conducted an inquest, received the required fee and the body was returned to the river. The same illuminating procedure was repeated by other local coroners downstream. After this flagrant display of enlightened post-mortem examination, the elective coroner system was replaced by medical examiners appointed by the Governor. The investigations of the medical examiner in Massachusetts were limited to cases of suspected violence and the examiner was not allowed to perform an autopsy unless he was duly authorized by the district attorney or other designated official. These restrictions impeded the effectiveness of the medical examiner, but the Massachusetts Plan was a vast improvement over the former system, and several New England states have adopted similar reforms.

In 1915, New York City inaugurated a central medical examiner's office. The most prevalent criticisms of the New York City coroner system were that the records of cases were inadequate, and that with few exceptions the medical investigation completed by the coroner was inferior in quality. "The fatal weakness of the system, however, was that it was based on the theory that the coroner, an elected official and frequently not a doctor, was empowered to determine by judicial process the cause of death in any case coming under his jurisdiction, or in other words to apply a legal means to solve a purely medical problem."[4]

In 1939 the state of Maryland enacted the Maryland Post-Mortem Examiners Law prescribing a comprehensive method of examining deaths for possible criminal causes. Although the Virginia statute of 1946 is also regarded as a model, the Maryland statute is

3. Report of the Committee of the American Medical Association to study the relationship of medicine and law, approved by the House of Delegates, American Medical Association, Chicago, 1945, p. 3.

4. The Work of a Medical Examiner's Office, B. M. Vance, M. D., p. 3.

The Coroner System in the United States*

State	Legal Basis	Mode of Selection	Term	Qualifications (3)	Compensation
Alabama (2)	Stat	Elect	4	None	Fees
Arizona (2)	Stat	Elect (JP's)	2	None	Fees
Arkansas (2)	Const	Elect	2	None	Fees
California (2)	S & Home R.	Elect	4	None	Indef.
Colorado	C & S	Elect	2	None	Fees
Connecticut (2)	Stat	Appt by Sup Ct.	3	Attorney	Salary
Delaware	Const	Elect	2	None	F & S
Florida (2)	Stat	Elect (JP's)	4	None	Fees
Georgia (2)	Stat	Elect	4	None	Fees
Idaho	Const	Elect	2	None	Fees
Illinois	Const	Elect	4	None	Fees
Indiana	Const	Elect	4	None	F & S
Iowa	Stat	Elect	2	None	Fees
Kansas	Stat	Elect	2	None	Salary
Kentucky	Const	Elect	4	None	Fees
Louisiana (2)	Const	Elect	4	MD	F & S
Maine (1)	Stat	Appt by Gov.	4	MD	Fees
Maryland (1)	Stat	Appt by Comm.	Indef.	MD	Fees
Massachusetts (1)	Stat	Appt by Gov.	7	MD	Fees
Michigan (2)	Stat	Elect	2	None	Fees
Minnesota	Stat	Elect	4	None	Fees
Mississippi	Const	Elect	4	None	Fees
Missouri	Stat	Elect	4	None	Fees
Montana	Const	Elect	4	None	F & S
Nebraska	Stat	Elect (Cty Att.)	4	None	Exp.
Nevada	Stat	Elect (JP's)	2	None	Fees
New Hampshire (1)	Const	Appt by Gov.	5	MD	Fees
New Jersey (2)	Stat	Elect	3	None	Fees
New Mexico	Stat	Elect (JP's)	2	None	Fees
New York (2)	S & Home R.	Elect	3	None	Fees
North Carolina	Const	Elect	4	None	Fees
North Dakota	Stat	Elect	2	None	Fees
Ohio (2)	S & Home R.	Elect	4	MD	Salary
Oklahoma	Stat	Elect (JP's)	?	None	Fees
Oregon	Const	Elect	4	None	Fees
Pennsylvania	Const	Elect	4	None	F & S
Rhode Island (1)	Stat	Appt by Att. Gen.	4	MD	F & S
South Carolina	Const	Elect	4	None	F & S
South Dakota	Const	Elect	2	None	Fees
Tennessee	Const	Appt by Cty Ct.	2	None	F & S
Texas	Stat	Elect (JP's)	2	None	Fees
Utah	S & Home R.	Elect (JP's)	4	None	Fees
Vermont (1)	Stat	Appt (Health C.)	Indef.	MD	Fees
Virginia (1)	Stat	Appt (Health C.)	3	MD	Fees
Washington	Stat	Elect	2	None	Fees
West Virginia	Const	Appt by Cty Ct.	Indef.	None	Fees
Wisconsin (2)	Const	Elect	2	None	Fees
Wyoming	Stat	Elect	4	None	Fees

(1) Coroner replaced by medical examiner. (2) Medical examiner in certain counties. (3) Other than age, residence and citizenship.

*Principal sources: "Coroners in 1953," National Municipal League, New York, New York, 2nd edition, 1954. "The Coroner System in Minnesota," Minnesota Legislative Research Committee, February, 1954.

THIS IS ONE of the series of panel strips concerning Rex Morgan, M. D. which deals with the weaknesses of many coroner systems in this country.

generally considered the most efficient post-mortem act in the United States.

The National Municipal League

Under the devoted leadership of Richard S. Childs, the National Municipal League completed a study in 1951 of the coroner and medical examiner systems. This study was supported by the American Academy of Forensic Sciences, the Criminal Law Section of the American Bar Association, the American Judicature Society, the American Medical Association and the National Civil Service League. The final report was drafted by Dr. Richard Ford, Director of the Department of Legal Medicine of Harvard University, resulting in the publication of "A Model State Medico-Legal Investigative System" under the auspices of the National Municipal League. The model statute recommended a medical examiner who would be a trained pathologist with extensive experience in investigating violent deaths. The state medico-legal investigator was to be appointed by a supervisory commission and to be assisted by a central state medico-legal laboratory. These recommendations were based on the following analysis: "It is an incontestable fact that, throughout the greater part of the United States, inquiry into the cause of violent death from obscure causes is the responsibility of laymen or physicians lacking the experience and technical aids necessary to establish the true cause and manner of death. That such a situation be permitted to exist means there is no realization of the need for skilled investigators and no concern for the injustice and tragedy that may and does result from the misinterpretation of medical evidence."[5] Following the publication of the model statute, widespread support for the state medical examiner as a substitute for the elective coroner resulted in the introduction of corrective legislation in several states.

The Model Act

In 1952, the National Conference of Commissioners on Uniform State Laws became interested in the possibility of reforming the obsolete coroner system. After a thorough study of existing state practices the Commissioners drafted and approved the "Model Post-Mortem Examinations Act" at the 1954 annual conference. The Model Act would create a Commission on Post-Mortem Examinations of ex-officio state officers such as the attorney general, the superintendent of state police, the state commissioner of public health and the deans of the medical school and the law school of the state university. The commission would appoint a Chief Medical Examiner who would direct the Office of Post-Mortem Examinations. The Chief Medical Examiner would be required to be a physician with a minimum of two years post-graduate training in pathology. In general, the Chief Medical Examiner would supersede the office of the coroner, and he would be granted authority to conduct post-mortem examinations.

The Commissioners came to the conclusion that the Chief Medical Examiner "must be

5. "A Model State Medico-Legal Investigative System," National Municipal League, New York, 1951, p. 9.

infallible in determining the direction of a bullet through the body. He must know how to remove the organs of the neck in order to demonstrate manual strangulation without destroying either the tissues to be examined or structures vital for subsequent embalming. He must know whether a hemorrhage in the brain caused the fall or whether the fall caused the hemorrhage. He must know how to determine whether death was due to drowning or whether the victim was dead when thrown into the water. He must know whether multiple fractures resulted from a fall or from being struck by a motor vehicle. If death resulted from a fall he must know how to search for evidence to distinguish among accident, suicide and homicide. All these basic problems and many others, especially those concerning surreptitious poisoning, must be understood by the pathologist who is an expert in legal medicine."[6] With these stated qualifications, the Commissioners agreed that the Chief Medical Examiner must be a trained pathologist in order to discharge his duties properly.

The Model Act follows closely the suggestions of the model statute of the National Municipal League, but in addition, the commissioners drafted a provision for states which are faced with a constitutional barrier to coroner reform. The act provides that where the office of coroner is defined by the constitution, the duties stipulated in the act will be transferred to the Chief Medical Examiner, and the respective state legislatures will define the remaining functions of the indestructible coroners.

Rex Morgan, M.D.

With the medical and legal professions united in a concerted effort to hasten coroner reform, the role of public educator was undertaken by a Toledo psychiatrist named Nicholas P. Dallis. In a period when comic books and comic strips are being subjected to a scrutinizing analysis by those who allege a direct correlation between comics and juvenile delinquency, Dr. Dallis has attempted to combine education with entertainment in presenting the medical and legal professions to the public. Realizing that more than 80 per cent of all adults in the United States read comics, Dr. Dallis created two fictional heroes, Judge Parker and Doctor Morgan,[7] to represent their respective professions. This new approach to the comic strip has been called "picture fiction," and Dr. Dallis defines the concept in the following way: "There has been an erroneous idea that comic readers don't want to be educated; that they want to be entertained. The fact is, an individual cannot be entertained unless he feels that he is learning something, whether it be factual or something pertaining to emotion. This is the reason for our fidelity to authenticity and realism in Rex Morgan, M. D. and Judge Parker." The success of this theory is substantiated by the thirty-five million readers who follow the exploits of a fictional judge and doctor and by the per-

THE MEN BEHIND Rex Morgan, M. D.: (Left to right) Dr. Nicholas P. Dallis, author, confers with co-artists Marvin Bradley and Frank Edgington. Dr. Dallis spoke on "The Law in the Eyes of the Public" at the recent annual meeting of the American Law Student Association in Philadelphia.

sonal citations received by Dr. Dallis from the American Medical Association and the American Bar Association.

Realizing the urgent need for a revision of the existing coroner system, Dr. Dallis embarked on a recent sequence in Rex Morgan, M. D., concerning the threat of society of an elective coroner who does not possess medical training. In an entertaining and forthright manner, the fictitious Dr. Morgan placed the conclusions of the professional organizations in the frame of reference of the average reader. The public's general fear of autopsies, and the inherent weaknesses of the elective coroner were dramatically portrayed to the comic strip audience. The coroner was placed in a new perspective for millions of Americans who were either complacent or inadequately informed concerning the abuses of the existing system.

State Legislatures Fail to Act

In spite of the joint efforts of the National Municipal League, the Commissioners on Uniform State Laws, and Rex Morgan, M. D., coroner reform was noticably absent from the acts adopted in the recent state legislative sessions. At the beginning of this year, only twenty states had adopted elements of the medical examiner system either on a local or state-wide basis. Of the remaining twenty-eight states, only seven were faced with the task of debating the merits of the coroner system during the 1955 sessions. Of the seven state legislatures which considered bills based on the model acts, not one was sufficiently impressed to authorize coroner reform. It would appear that either the majority of our state legislators fall within the 20 per cent of American adults who don't read comics or the ancient shibboleth known as patronage has again exerted its powerful influence over the minds of our elected representatives.

Summary

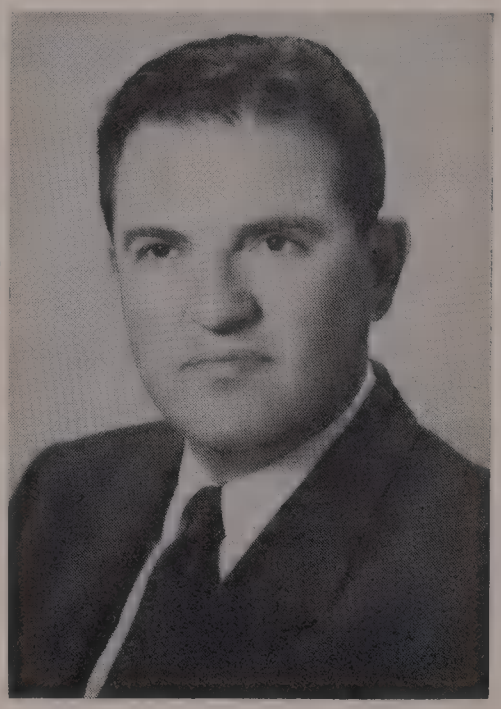
The office of the coroner is one of the most notable anachronisms in the judicial system of the United States. It has been said that to determine by judicial process whether a ruptured appendix was the cause of death is only slightly less ludicrous than to ask a jury to decide whether a pain in the abdomen warrants the removal of the appendix. Like the coroner, the medical examiner would be charged with the duty of investigating all cases of death involving mysterious circumstances, but his investigation would not be subject to the restrictions and inadequacies which plague the coroner. It is the opinion of the author that an appointive medical examiner, selected by an independent commission, trained in the science of medicine and preferably pathology, paid an attractive salary and authorized to direct a competent medical staff with access to extensive laboratory facilities is preferable to the elective coroner in conducting involved medico-legal investigations. Death is seldom welcome, but with the existing coroner system, we can only hope that it will not occur under mysterious circumstances.

6. Proceedings in Committee of the Whole, Model Medical Examiners Act, National Conference of Commissioners on Uniform State Laws, 1953, p. 329.

7. Distributed by the Publishers Syndicate of Chicago.

Legal Autopsy

By LOUIS M. BROWN



LOUIS M. BROWN, a member of the Los Angeles bar, is vice-chairman of the public relations committee of the State Bar of California. He is author of "Manual of Preventive Law," reviewed in the December, 1950, Journal.

"*EVEN A PHYSICIAN* of the highest skill often finds in the post-mortem room that his diagnosis of the patient's disease during life needs rectification. The knowledge he obtains thus he applies in future cases to the advantage of other patients."[1]

"The law is the only profession which records its mistakes carefully, exactly as they occurred, and yet does not identify them as mistakes. . . ."[2]

The mistakes of a trial court are subject to scrutiny on appeal. No doubt trial judges have learned a good deal from appellate decisions which affirm or reverse. Sometimes appellate decisions are critically analyzed in discussions in texts and law reviews.

Even the strong hand of stare decisis is sometimes unable to stave off critical blows of post-judgment treatment.[3] But post-mortem study of mistakes of trial and appellate judges is not enough. What of the post-judgment study of mistakes of lawyers and the litigants? It is too simple to say that the losing lawyer is "punished" because he lost, and the winning lawyer is "rewarded" by the victory. Why did one lose, and the other win? Was there a middle course which neither followed? How much was really won, and how much was really lost?[4]

No doubt each litigating lawyer gives some

1. 2 Encyclopedia Britannica 790 (1953).

2. Elliott Dunlap Smith (Provost of Carnegie Institute of Technology) at the Conference on the Teaching of Law in the Liberal Arts Curriculum (mimeo Harvard Law School, November, 1954).

3. e.g. Erie R.R. v. Tompkins, 304 U.S. 64 (1938) over-ruling Swift v. Tyson, 16 Pet. 1 (U.S. 1842).

4. Nims, "The Biography of a Lawsuit," 40 A.B.A.J. 575 (1954). Mr. Nims relates the history of a case filed in 1939. The plaintiff asked for $11,806.55 damages. In 1948 judgment was rendered by the trial court, as prayed, with interest. Says Mr. Nims (page 577),

> "It seems therefore reasonably accurate to say that the disposition of this case must have cost the public and the parties at least $15,000."

thought to the result of a case after the judgment day. Perhaps there were a few things he could have done differently. He made some mistakes, but nowhere are they identified as mistakes, and the profession as a whole scarcely learns from those mistakes.

A case litigated to final judgment is a long and complicated process. In inverse order, there is at least a judgment, a trial, motions, pleadings, perhaps settlement negotiations, a plaintiff who desired to sue, a defendant who was sued, a set of facts giving the client some basis for his desire to be a plaintiff, and perhaps some mistake made by the client or his adversary long before the facts occurred giving rise to the lawsuit.[5] We could learn a great deal if lawyer mistakes and client mistakes were identified and diagnosed.

How could we do this? We could adopt a procedure for study of a case after decision is final. The judge, the plaintiff's attorney, and the defendant's attorney could each "let his hair down" and discuss the case. The clients need not, and should not, be present. This is an attorneys' private post-mortem designed to acquire knowledge for the ultimate advantage of other clients.

What might we learn? We might learn some things we expect to learn, for example: why the other attorney introduced certain evidence, where we should have cross-examined and did not do so, a witness we might have called but did not do so, a legal point we stressed too much or not enough, and all the numerous trial skills and tactics.

But what we really ought to study is why this case really started in the first place. Which client made what mistake that led him into legal trouble? When was an attorney's advice first sought by each client? What was that advice? Now that we know the final judgment, we can ask whether that advice was correct. How could the litigation have been avoided? How much did the litigation cost? What about settlement negotiations? – were there any? what was offered? was it too much, too little, offered too soon, too late, or no offer at all?

It might be helpful to learn what the parties did after judgment. If the plaintiff won a monetary judgment, did he collect in full? – settle for less? or, perhaps, actually collect nothing? If the defendant was found guilty of creating a nuisance, how did he correct the nuisance? – and why was it not corrected before judgment?[6]

We might learn some really surprising things. One example should suffice. The judge of a trial court told me a really interesting course of events regarding the settlement of a case in his court. During the trial the judge sensed that counsel had unsuccessfully endeavored to settle the case. Like many cases, a settlement might be more just than a decision wholly in favor of one or the other party. The judge offered to hear privately the best proposition of each party, promised not to reveal the proposal to the other side, but offered to say merely that it appeared that the case could or could not be settled. The attorneys accepted and each told his side. After listening, the judge told them that he felt the case could be settled. It was. Reason: the judge learned that the plaintiff was really willing to take less than the defendant was actually willing to pay.

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5. Brown, *Manual of Preventive Law*, (Prentice-Hall, Inc., 1950) is an attempt to give rules to enable the layman to avoid entering into a set of facts which may later result in litigation.

6. One ingenious law school student did just this. A torts casebook reports the case of a cafeteria which attracted large numbers of patrons, overflowing onto the public sidewalk of a neighboring drugstore. The drugstore succeeded in getting an injunction on the ground of nuisance. The student asked the defendant what finally happened and was told that the city thereafter provided policemen to see that not too great a crowd assembled. Quaere: Why was this not done *before* the lawsuit was started? This example was related to me by Professor Harold J. Berman of Harvard Law School.

Post-judgment autopsy would, of course, take time. Time of the judge and attorneys. Judges, we learn, already have more to do than they can handle. Trial is months and years behind time. Legal autopsy would take time away from cases on the calendar. In the short-run this objection seems correct. In the long-run, the probability is that we could learn enough to make it worthwhile. We might learn how to avoid enough litigation to save more than the time it took to conduct the legal autopsies. Pre-trial takes time, but it appears to save trial time and make for a more just result. Post-trial autopsy should add to our knowledge and skills, help us adopt new procedures that would save time, explore unexplored areas, find causes for mistakes, and certainly enable us to do a better job to the advantage of other clients.

Post-judgment examination might be conducted by an independent examiner. More than one hundred law reviews examine and analyze appellate decisions in the student case-note section. Students could, with profit, make the kind of autopsy study of the litigated case here advocated. The student can study the pleadings, talk to both attorneys, talk to the judge, talk to the clients, and report his findings. This would take some time of the judge and attorneys, but doubtless there are some who would cooperate. If we could gather legal autopsies of a hundred or a thousand cases, we might begin to see whether this suggestion has merit. Until we make such a pilot study, we have no real basis to reject it.

Experience is a great teacher. We have the accumulated experience of thousands of litigated cases which can teach us a great deal if we study that experience with a view to discovering the causes and effects of litigation.

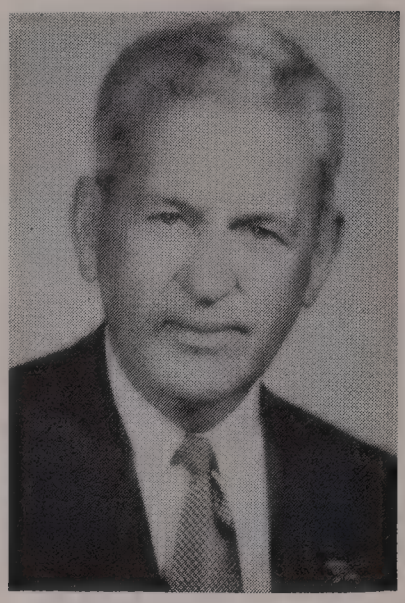
Echoes from the Past

(From the Journal of the American Judicature Society, August, 1920)

"Michigan has a system of licensing drivers. The Detroit police examine applicants and the secretary of state issues indeterminate licenses. . . .

"Besides workhouse sentences for dangerous traffic violators it is possible to cancel the driver's license. The secretary of state can withhold driving privileges for not more than one year. These two drastic penalties will doubtless be needed in time in every city, for the protection alike of those who ride and those who walk."

The Law's Delay and the Pennsylvania Arbitration Plan



CO-FOUNDERS J. Campbell Brandon (left), past president of the Butler County and Pennsylvania Bar Associations, and Carmen V. Marinaro, Butler attorney.

By HOWARD C. WESTWOOD

LIKE THE WEATHER, the law's delay is the subject of much talk with little action. But a Pennsylvania statute, the constitutionality of which was recently sustained by the state supreme court, may have made more progress toward minimizing, if not solving, the problem of delay in civil litigation than has been accomplished by all other means combined in the last fifty years.

The Act was adopted in 1952. It appears in Purdon's Penna. Statutes Annotated, Title 5, Secs. 30 et seq. It provides that the Court of Common Pleas of any of the Pennsylvania counties may, by rules, require that all civil cases upon coming to issue, wherein the amount in controversy is $1,000 or less, except those involving title to realty, be submitted to arbitration by three members of the county's bar. The court's prothonotary is to appoint the arbitrators from a list of attorneys "qualified to act," taking them in alphabetical order.[1] No more than one member of a law office shall be appointed to the same arbitration board. The appointment must be made 10 days after the case is at issue and the arbitrators must render their decision within 20 days after their hearing. The court's rules are to provide for the fee for each arbitrator, which is to be paid by the county.

After the arbitrators' decision any party may have his case tried in court de novo in the usual manner, but only if he first reimburses the county for the arbitrators' fees. The teeth of the Act appear in the provision that, "Such fees shall not be taxed as costs or be recoverable in any proceedings."

The arbitrators have the power to require the attendance of witnesses and the production of documentary evidence.[2] In some counties, at least, the arbitration is conducted in a court room and "proceeds with all the formality of a court case."[3] The decision of

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HOWARD C. WESTWOOD is a member of the bar of the District of Columbia. This article is adapted from material originally appearing in the Journal of the Bar Association of the District of Columbia.

1. The rules of the Court of Common Pleas of Montgomery County (Norristown)—the only rules which the author has seen—provide that the list is to be kept confidential. A copy of these rules was provided through the courtesy of the Hon. Harold G. Knight, President Judge of the Court of Common Pleas of Montgomery County.

2. The Montgomery County rules provide that the arbitrators shall apply the rules of evidence, "which, however, shall be liberally construed to promote justice."

3. Letters to the author from the Hon. J. Campbell Brandon, president of the Pennsylvania Bar Association, May 5 and May 25, 1955.

the arbitrators, if the case is not taken to court, is final and has the same effect as a court judgment.[4]

Obviously a serious constitutional question was presented by this Act. In the case of Application of Harvey A. Smith, 381 Pa. 223, 112 A. 2d 625 (March 23, 1955), the Supreme Court of Pennsylvania sustained the Act by a divided vote. The constitutional attack had been that the Act violates the due process guarantee of the Fourteenth Amendment and the right to jury trial conferred by Article I, Sec. 6, of the Pennsylvania Constitution which provides that, "Trial by jury shall be as heretofore, and the right thereof remain inviolate."

The majority held that a reasonable condition could be imposed on a litigant's right to a regular court trial, and that the requirement that the county be reimbursed for arbitrators' fees, even though the payment to the county was not thereafter recoverable as costs, was not per se an unreasonable condition.

The rules in question before the Court – those adopted for Lancaster County – provided for arbitrators' fees of $25 for each of the three arbitrators in each case. The Supreme Court held that an unvarying charge of $75 imposed on one seeking a court trial would be unreasonably high in cases involving only small amounts and that the Courts of Common Pleas, in adopting their rules, "should provide for a lower rate of compensation where only a comparatively small claim is involved." The Court commented that this

4. The Montgomery County rules provide that the decision shall be "substantially in the form of a verdict of a jury and need not contain a recital of facts nor a statement of reasons" unless the arbitrators "deem it advisable."

THE OATH is being administered to the members of the board prior to the hearing. The Compulsory Arbitration Act has been approved by more than thirty counties in the state of Pennsylvania.

AN ARBITRATION BOARD in session in Butler County. From left to right, defendant's counsel, defendant, the three arbitrators, plaintiff and plaintiff's counsel.

might require an occasional sacrifice on the part of members of the bar acting as arbitrators, "but it is undoubtedly one that lawyers will cheerfully make in pursuance of those professional ideals which not infrequently lead them . . . to render service to a client without any compensation at all."[5]

With the basic constitutional question at rest, it is likely that the various Courts of Common Pleas in Pennsylvania will vigorously pursue this experiment in the administration of justice. Already rules implementing the Act have been adopted in some forty of a total of sixty-seven counties.[6]

One of the most interesting aspects of this new system is the enthusiastic support it has received from the bar. Often the bar has been suspicious of arbitration and inclined to resist any encouragement of its use. In this instance, however, not only has the bar cooperated fully in the implementation of the arbitration machinery, but the Act itself was born of a similar system set up in Butler County at the urging of the local bar[8] and the impetus for the adoption of the Act by the legislature came largely from the bar of the state.

5. The Montgomery County rules fix the arbitrators' fees at $30 for each arbitrator for each case but in a particular case, on petition to the Court, the fees can be increased in an involved case or decreased "to prevent injustice"; those rules also provide that the required repayment to the County can be reduced by the Court in a particular case "to prevent injustice or hardship." Some thought is being given to amending the Act so as specifically to permit a Court of Common Pleas to reduce the required repayment to the county where, on petition to the Court, a reduction appears proper. See address on The Law's Delays, by the Hon. Henry G. Sweney, President Judge of the Court of Common Pleas of Delaware County, at the Judicial Conference of Pennsylvania, April 14 and 15, 1955, printed in the Legal Intelligencer, Philadelphia, Pa., for May 2, 1955, p. 6:5.

6. Letter to the author from the Hon. Aaron S. Swartz, Jr., Arbitration Administrator for Montgomery County, May 17, 1955. (The Act is not applicable in Pittsburgh or Philadelphia, but it is understood that extension of it to those cities is under consideration.)

During the first year of the operation of the arbitration rules in Dauphin County (Harrisburg) over half of the members of the bar of that county were serving as arbitrators.[9] And in Montgomery County (Norristown), where the Court of Common Pleas adopted the rules immediately after the decision of the constitutional question, every lawyer in the County physically able to do so has agreed to serve.[10]

The results already realized from the new system are gratifying. A recent announcement by the Honorable J. Campbell Brandon, President of the Pennsylvania Bar Association, and one of the fathers of the original Butler County system and of the Act itself, shows that in a score of counties which had the system in operation during the last six months of 1954 only five percent of the cases tried by arbitration were taken to court.[11] The consequences in terms of speeding the administration of justice are obvious. In Butler County a waiting period of some three or four years was necessary, prior to the adoption of the arbitration system, before civil cases could be reached for jury trial, whereas now trial is reached within a year.[12] And in Dauphin County, after only one year's experience, the new method for dealing with the small cases has so reduced the backlog in the Court of Common Pleas that the larger suits are coming to trial very rapidly. At the April, 1955, term of that court the calendar was so nearly current that it actually included one case filed after the first of the year. Previously there was a waiting period of at least a year.[13]

It is, indeed, interesting to note that the insurance companies were not opposed to the Act because of the very fact that the speeding of the process of justice enables them sooner to have their liability determined. This consideration has outweighed, in their minds, the apparent disadvantage to them of having parties more willing to file law suits when they are more quickly adjudicated.[14]

Analysis of Dauphin County's experience in its first year also shows that the system, among its other advantages, has resulted in a net saving to the County by a reduction in the expense of fees paid to jurors and of jurors' meals and mileage.[15] The net saving in one county is reported to be $72,000 a year.[16] It was the saving of expense which led the County Commissioners of Butler County to agree to the pioneer arbitration system when it was proposed by the local bar.[17]

An article on the original Butler County experiment, written just prior to the adoption of the Act, closed with a paragraph which bears quoting, for it strikes a note of particular significance to the bar:

"We believe this plan which has met with success in our county can be helpful in many counties. It is a method by which lawyers can overcome the trenchant criticism of the law's delay and demonstrate to the public that we, too, are interested in promoting justice with a minimum of delay and properly lubricating our legal machinery."[18]

Pennsylvania has demonstrated that organs of society are still capable of fashioning needed tools for government. Its bar can take pride in the manner in which its members have risen to the challenge of a new role for them in the judicial process.

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8. The Butler County system had—to say the least—a shaky legal foundation and was a daring step. See Brandon and Marinaro, Butler County Tries Arbitration, XXIII Pennsylvania Bar Association Quarterly 58 (1951).

9. The Patriot, Harrisburg, Pa., for April 28, 1955, p. 19:1.

10. Letter to the author from the Hon. Aaron S. Swartz, Jr., May 17, 1955.

11. Press release issued by the Pennsylvania Bar Association at Harrisburg, Pa., in April, 1955.

12. Letter to the author from the Hon. J. Campbell Brandon, May 25, 1955.

13. The Patriot, Harrisburg, Pa., for April 28, 1955, p. 19:1.

14. Brandon and Marinaro, op. cit., supra n. 8, at pp. 60-61; letter to the author from the Hon. J. Campbell Brandon, May 5, 1955.

15. The Patriot, Harrisburg, Pa., for April 28, 1955, p. 19:1.

16. See address on The Law's Delays, by the Hon. Henry G. Sweney, op. cit., supra, n. 5, p. 1:1.

17. Brandon and Marinaro, op. cit, supra, n.8, at p. 59.

18. Brandon and Marinaro, op. cit., supra, n. 8, at p. 61.

Judicial Administration in the Legislatures

Guam Adopts Jury System

For the first time in history, the citizens of the territory of GUAM will be entitled to trial by jury. In the court and legislature capitol building pictured above, the Third Guam Legislature passed a law which will grant the right of trial by jury to any person accused of a felony in the District Court of Guam and to parties involved in civil cases within the jurisdiction of the District Court. In addition to the jurisdiction of a U. S. District Court, the District Court of Guam has jurisdiction in all forms of civil cases for the Government of Guam where the amount involved exceeds $2,000 plus jurisdiction in equity proceedings. As a result, it is expected that the new statute will grant the citizens of Guam more extensive rights to trial by jury than are guaranteed to the citizens of the United States by the Federal Courts. Under the new statute, the federal rules of criminal and civil procedure will apply.

Court System Studies Inaugurated

A resolution has been adopted by the ALABAMA Legislature creating a Judiciary Advisory Council and a Commission for Judicial Reform to make a joint study of the practice and procedure in the courts of the state of Alabama. The study will include the form, manner and order of conducting cases, suits and actions in all courts of Alabama, and recommend, in legislative form, measures which will improve the practice and procedure in the courts, and such other measures as will facilitate the administration of justice. The council and the commission have been authorized a sum of $35,000 to conduct their research, and a final report recommending changes in the Alabama court system will be submitted to the legislature within the next six months.

A new Council on the Administration of Justice has been created by the DELAWARE state legislature. The Council will make a continuing study of the administration of justice in Delaware and will recommend "to the Governor, the General Assembly, the courts or to any office or department, or to the bar, either upon request or upon the Council's own motion, such changes in the law or in the rules, organization, operation or methods of conducting the business of the courts, or with respect to any matter pertaining to the administration of justice as it may deem desirable."

At the same time, Governor Muskie has signed a bill requesting the State Judicial Council of MAINE to study the desirability of shifting divorce and other domestic relations cases from State Superior to Probate courts; establishing district courts to replace municipal courts and trial justices; and creating a statewide probation and parole system. The council will submit its recommendations to the 1957 state legislature.

Other Court Administration Proposals

A proposed FLORIDA state constitutional amendment to set up a court of appeals to take on overload of cases now handled by the State Supreme Court has been given legislative approval for submission to the electorate. Under the terms of the amendment, the state would be divided into three or more appellate districts. The Supreme Court of Florida, which now hears all appeals from the circuit courts and courts of record, would limit its jurisdiction to review of cases involving death sentences and validity of state laws, federal statutes and treaties, constitutional construction and bond validations. All other appeals would be heard by the district courts. The proposed amendment also in-

cludes provision for general rule making power of the Supreme Court and for admission of attorneys under the jurisdiction of the highest court.

In NEW YORK state, a court reorganization plan calling for the consolidation and unification of eighteen courts and types of courts has been recommended to the legislature by the Temporary State Commission on the Courts. The existing courts would be merged into a flexible statewide system of five courts with various specialized divisions. The commission, under the direction of Harrison Tweed, stated that the reorganization was necessary to enable the courts to cope more efficiently and economically with modern condition and to restore public confidence in the administration of justice. If the proposed legislation is adopted, it will be the first reorganization of the state's complicated court structure in more than one hundred years.

The material included in this summary has been derived from legislative bulletins, bar association publications, newspaper articles, reports of judicial councils and correspondence from readers of the Journal. Undoubtedly, legislation has been introduced involving judicial administration of which the editorial staff has not been apprised. To insure that this department will reflect the current status of judicial reform through legislation, please send all legislative information to:

The American Judicature Society
1155 East 60th Street
Chicago 37, Illinois

West Virginia Amends Bar Admission Procedure

The WEST VIRGINIA legislature has passed a bill authorizing the Supreme Court of Appeals to allow attorneys from other jurisdictions to be admitted to practice in West Virginia without taking a bar examination. The new legislature will only be applicable to lawyers from state jurisdictions which grant similar privileges to members of the West Virginia bar.

Judicial Compensation
Adopted Legislation—1955

State	Highest Appellate Court		Intermediate Appellate Court		Trial Courts of General Jurisdiction		Trial Courts of Limited Jurisdiction	
	Former	Adopted	Former	Adopted	Former	Adopted	Former	Adopted
Federal	25,000 25,500 CJ	35,000 35,500	17,500	25,500	15,000	22,500		
California	19,000 20,500 CJ	23,000 24,000 CJ	18,000	21,500 22,000 CJ	10,000 16,750	15,000 18,000	12,000	13,500 16,500
Connecticut	15,000 15,500 CJ	19,000 20,000 CJ			15,000	18,500	12,500	15,500
Florida	13,500	15,000			10,000	12,000		
Georgia					8,400	10,000		
Illinois	20,000	24,000	12,500 19,000	15,000 22,000	12,500 19,000	15,000 22,000		
Iowa	10,000	12,000			8,000	10,000		
Kansas	10,000	12,000 13,000 CJ						
Massachusetts							9,900	12,000
Montana	9,000	11,000			7,500	9,000		
Nebraska	9,100	12,000			7,400	10,000		
Nevada	15,000	16,500						
Oregon	12,000	13,500			10,500	11,000	4,000- 5,000	7,000- 8,000
South Dakota	8,700	10,000			7,200	8,000		
Tennessee	12,000 12,600 CJ	15,000 16,500 CJ	10,000	12,500	7,500	10,000		
Utah	9,000	10,000			7,500	8,000		
West Virginia	12,500	17,500						
Wisconsin	12,000 12,500 CJ	14,000 14,500 CJ			10,000	12,000		

In NEW JERSEY, the Supreme Court has tentatively approved amendments to Canon 13 of the Canons of Professional Ethics. The amendments would restrict contingent fees to one-third of the award regardless of the expenses and costs involved in the investigation and presentation of the case. In addition, the amendments would require court approval of all fees involving infants or incompetents.

Procedural Legislation

The CALIFORNIA Code of Civil Procedure has been amended to authorize the Judicial Council to promulgate rules governing pre-trial conferences. The Judicial Council will adopt rules concerning the time, manner and nature of all pre-trial conferences in civil cases tried in superior and municipal courts.

The WISCONSIN Criminal Code Advisory Committee has submitted a report to the State Legislative Council recommending a revised criminal code. The committee of nineteen judges and lawyers has met three times per month since December 1953 to consider the codification of Wisconsin criminal law.

Microprint Saves Shelf Space

ALL THESE BOOKS are compressed into the four boxes on the table, which contain a complete annotated set of United States Supreme Court reports in the new Microlex edition.

Microphotography as a device to reduce the cost and increase the efficiency of keeping court records has been discussed in prior issues of the JOURNAL.[1] In Mr. Leary's article in the last issue,[2] reference was made to the prospective use of microphotography for the preservation of American Bar Association section and committee reports in the new Cromwell Library in the American Bar Center.

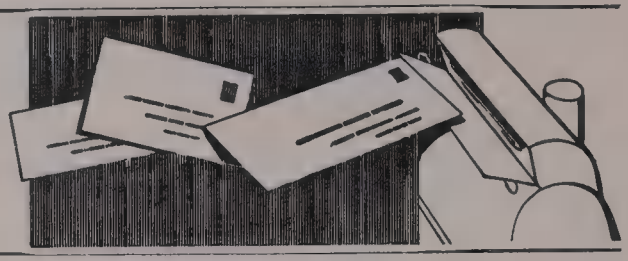
Not all of the law book problems can be disposed of by microphotography. Overlong judicial opinions, for example, should be shorter regardless of how they are printed or published. But microphotographed editions can save a part of the original cost and virtually all of the cost of storage, and these are tremendous items. The saving of shelf space is portrayed most dramatically by the accompanying photograph of a complete set of United States Supreme Court opinions, on the left in ordinary volumes, and on the right in the new Microlex edition published by the Lawyers Cooperative Publishing Company of Rochester, N. Y.

In this edition, 400 pages of printing are microprinted on a card of 6½ by 8½ inches. The type is reduced to one fifteenth of its original size, and then enlarged about eighteen times by the reader so that it shows up bigger and easier to read in the reader than on the original page. Experience has shown, furthermore, that the cards are easier to handle than books, and citations can be looked up more rapidly.

1. "Microphotography and the Record Problems of our Courts," by Herbert U. Feibelman, 33 J. Am. Soc. 6 (June, 1949); "Microfilming of Detroit Court Records Reduces Storage Space by 98 Percent," 37 J. Am. Soc. 42 (August, 1953).

2. "The Cromwell Library in the American Bar Center," by John C. Leary, 39 J. Am. Soc. 13 (June, 1955).

The Reader's Viewpoint



Tax Practice and Law Practice

I was much interested in the June 1955 issue of the JOURNAL to read your reply to the Department of Business Administration of Marshall College, Huntington, W. Va. In the last paragraph of your reply you said, referring to the lawyers: "What they do want and must have is the whole of law practice." Undoubtedly, that is a true statement of what the bar of this country feel they should have. The authority to practice law is given to no one except those who have measured up to the educational requirements for the bar and who have passed examinations required by most of the states for admission of lawyers to practice. When so admitted, lawyers are the only persons in the body politic who are entitled to practice law. Basically, accountants or any other lay persons have no legal right whatsoever to practice law. Accountants, as a matter of law, have as much right to practice surgery as they do to practice law.

You refer to the 1951 agreement by the National Conference of Lawyers and Certified Public Accountants. The biggest trouble with such an agreement, when one comes to enforce it, is that certified public accountants represent a very small fraction of the persons who are practicing accountancy and who think they should be allowed to practice law just as do certified public accountants. Therefore, there is really no general profession of accountancy and no body who have any control over such individuals, numerous as they are.

On the other hand, the legal profession has now become very well organized by means of its national organization and the organization in the states and smaller public units of government. Through handling of grievances and the authority of the courts every lawyer is subject to discipline according to the standards of the profession. All of this points out the fact that it is very difficult for a profession, organized as the legal profession is, to deal on an equality with accountants who have no general public control in existence over their activities and generally no responsibility nor support for agreements made on behalf of the profession so-called.

R. F. CLOUGH

318-21 Brick & Tile Building
Mason City, Iowa

Termites in Government

I have this minute completed the reading of the article by Mr. Allen T. Klots relative to the "short ballot" as a means of selecting judges, in the February-April issue.

We have "a republic, if we can keep it."

We cannot preserve the republican form of government if we sacrifice all of its principles to our lust for efficiency. Any machine politician would find the short ballot convenient. I am speaking from experience. I have served in such capacity.

All of the objections that Mr. Klots has to our long ballot only prove one point, and that is that we need to improve our methods of enlightening our voters regarding the qualifications of our candidates.

It is more practical to mend a roof than to destroy the house.

I am willing to concede that a republican form of government is not the most efficient, but it affords the most liberty and prosperity to aspiring individuals.

Advocates of managerial city government, expanded civil service and shorter ballots are all having the effect on our government that termites have on a tree when colonizing at its roots.

PARREN DURWOOD LINDSEY

Hominy, Oklahoma

Bench and Bar Calendar

August

15-19—National Association of Claimants' Compensation Attorneys, Cleveland.
15-20—National Conference of Commissioners on Uniform State Laws, Philadelphia.
17-19—National Association of County and Prosecuting Attorneys, Baltimore.
17-20—Conference of Chief Justices, Philadelphia.
19-20—National Conference of Bar Secretaries, Philadelphia.
19-21—National Association of Women Lawyers, Philadelphia.
20-21—National Conference of Bar Presidents, Philadelphia.
20-24—American Law Student Association, Philadelphia.
22-26—American Bar Association, Philadelphia.
23-25—Maine State Bar Association, Rockland.
25—American Judicature Society, Philadelphia.

September

1-2 —State Bar of South Dakota, Rapid City.
1-3 —Washington State Bar Association, Yakima.
1-3 —West Virginia Bar Association, White Sulphur Springs.
1-3 —Wyoming State Bar, Cody.
7-8 —Michigan Judges Association, Dearborn.
8-10—Utah Traffic Court Conference, Salt Lake City.
12-13—Conference of California Judges, San Francisco.
12-16—State Bar of California, San Francisco.
14-16—State Bar of Michigan, Detroit.
22—Delaware State Bar Association, Wilmington.
22-24—Indiana State Bar Association, French Lick Springs.
22-24—Missouri Bar. Kansas City.
22-24—Oregon State Bar, Baker.
26-28—Maine Traffic Court Conference, Augusta.

October

4 —Vermont Bar Association, Montpelier.
6-7 —Nebraska State Bar Association, Omaha.
6-8 —West Virginia State Bar, Wheeling.
10—Rhode Island Bar Association, Providence.
11—Federal Bar Association, New York City.
12-14—National Legal Aid Association, Rochester, New York.
12-15—Northwestern Regional Meeting, American Bar Association, St. Paul.
13-15—Colorado Bar Association, Colorado Springs.
14-15—State Bar of New Mexico, Santa Fe.
17-18—State Bar Association of Connecticut, Hartford.
28—North Carolina State Bar, Raleigh.

November

9-11—State Bar of Nevada, Reno.
14-16—Public Relations Society of America, Los Angeles.
27-30—Deep South Regional Meeting, American Bar Association, New Orleans.
27-30—Tulane Regional Traffic Court Conference, New Orleans.
29—American Judicature Society Luncheon Meeting, New Orleans.

December

1-3 —Tulane Regional Traffic Court Conference, New Orleans.
7-10—Oklahoma Bar Association, Oklahoma City.

1956

January

19-21—Midwinter Meeting, Pennsylvania Bar Association, Harrisburg.
23-26—Oregon Traffic Court Conference, Eugene.

February

16-21—American Bar Association Mid-Year Meeting, Chicago.

March

5-9 —Yale Regional Traffic Court Conference, New Haven.

April

16-21—Inter-American Bar Association, Dallas, Texas.

May

24-26—State Bar of Arizona, Flagstaff.

June

25-28—Annual Meeting, Pennsylvania Bar Association, Spring Lake Beach, New Jersey.

July

23-28—International Bar Association, Oslo, Norway.

August

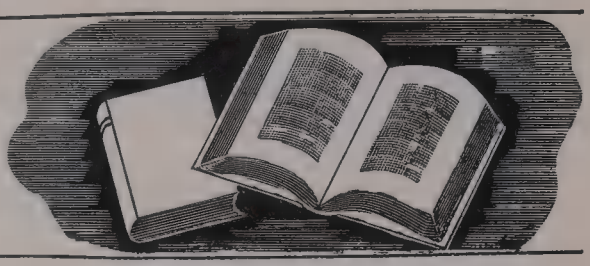
27-31—American Bar Association, Dallas.

1957

July

15-30—American Bar Association, New York (15-17) and London, England (24-30).

The Literature of Judicial Administration



BOOKS

A year ago in these pages we reviewed R. M. Jackson's *The Machinery of Justice in England.*[1] We wondered then why nobody ever had written such a description of the American judicial establishment. Political science textbooks, to be sure, do undertake to cover the ground, but only briefly and as a part of a larger study of the governmental system as a whole. A few months ago, we are glad to say, a splendid text of that very nature was published. It is *The American Legal System,*[2] by Professor Lewis Mayers of the City College of New York.

The book gives a full and authoritative description of all aspects of organization, personnel and operation of American judicial tribunals, including not only the state and federal courts but also state and federal administrative tribunals, military tribunals, and voluntary arbitration tribunals. With respect to each item it gives a clear account of the system as it is, illuminated by a historical review of how it came to be that way, an analysis of its strengths and weaknesses, description of leading reform measures, and the arguments for and against them. The author now and then offers his own reform proposals, including the interesting one that there be more specialized courts of appeals such as those already in existence in two states for criminal cases. Professor Mayers suggests an appellate bench specialized in the field of trusts and estates, and others in domestic relations, torts and public administration, and, in the federal system, in admiralty, patents and federal taxation.

The book would be more useful if it were more specific in naming states. The two that have courts of criminal appeals are Oklahoma and Texas, but the book only gives the number of states and not their names.

We commend three new books to officers of local bar associations. *Guide to Community Action,*[3] by Mark S. Matthews, offers practical ideas for organizing, financing, recruiting members, and programming a local volunteer community organization. Much of the material is directly applicable to bar associations themselves, and all of it is pertinent to the various community projects in which all right-thinking lawyers sooner or later find themselves taking a leading part. The new *Standard Code of Parliamentary Procedure,*[4] by Alice F. Sturgis, offers to the same people improved methods and procedures for organizing such groups and handling their internal affairs. Lawyers should take a special interest in this, for who knows better than the lawyers themselves how readily everybody else takes it for granted that the lawyer in the group should be its official parliamentarian? The new code, which corrects many of the weaknesses of older parliamentary law that have confused chairmen, secretaries and members for generations, was drafted with the help of a distinguished advisory committee including our own president Albert J. Harno. A companion volume is Mrs. Sturgis' *Learning Parliamentary Procedure,*[5] which accomplishes the seemingly impossible task of making parliamentary law actually interesting. Part of the credit is due to the sprightly verses and cartoons, of which the following, entitled "Don't Look at Me, I Didn't Say Anything," is an example:

At meetings of clubs, by an effort of will,
I always contrive to keep perfectly still,
For it takes but a word of annoyance or pity
And wham! there I am on another committee.

1. New York: Cambridge University Press, 1953. Reviewed, 38 J. Am. Jud. Soc. 28 (June, 1954).

2. New York: Harper and Bros., 1955. Cloth, pp. ix and 589. $6.50.

3. New York: Harper and Brothers, 1954. Cloth, pp. xiii and 434, $4.00.

4. New York: McGraw-Hill, 1950. Cloth, pp. xxv and 268. $3.00.

5. New York: McGraw-Hill, 1953. Cloth, pp. xvi and 358.

Other books of interest and importance:

Families in Conflict[6] by Thomas P. Monahan. A study of the nature, prevalence and variation in the amount of desertion, non-support, family discord and separation in the United States. Also, in the same connection, *Grounds for Divorce in European Countries,*[7] by Ervin Doroghi, the first such survey published in English since before the first World War.

Two United Nations publications – *The Indeterminate Sentence,*[8] written to give governments up-to-date information on legislation and practices and an estimate of the results of the indeterminate sentence under different legislative and administrative systems; and *The University Teaching of Social Sciences: Law,*[9] by Charles Eisenmann of the University of Paris.

Yesterdays,[10] a book of reminiscences by Louis S. Levy, famous lawyer of the last generation.

ARTICLES

Administrative Law and Procedure

"Administrative Trial Examiners: The Anonymous 'Masters'," by Ivan C. Rutledge. Washington Law Review, February, 1955, pp. 26-35.

"The Proposed Texas Administrative Procedure Act," Comment—by George W. Terry. Texas Law Review, April, 1955, pp. 499-516.

"A Study of the Significant Departures from the Administrative Procedure Act as Found in the 1952 Amendments to the Communications Act of 1934," by J. M. Van Osdol. University of Cincinnati Law Review, Fall, 1954, pp. 469-480.

Appellate Procedure

"Appellate Procedure—Ripeness for Review by Appeal or Certiorari," Case Notes. Tennessee Law Review, June, 1955, pp. 1033-1038.

"The Right of State Appeal in Criminal Cases," Note by John C. Giordano, Jr., Rutgers Law Review, Spring, 1955, pp. 545-554.

Bar Activities

"Accountants in the Field of Federal Taxation," Comment by Horace N. Freedman. Southern California Law Review, April, 1955, pp. 303-313.

"The Character of a Lawyer in the Community," by Charles B. Taft. Mississippi Law Journal, May, 1955, pp. 215-220.

"Free Press and Fair Trial," by Angelus T. Burch. The Journal of the Bar Association of the State of Kansas, May, 1955, pp. 352-362.

"Judicial Independence and Freedom of the Press," Note by Thomas S. Schattenfield. Western Reserve Law Review, Winter, 1955, pp. 175-182.

"Lawyers Are a Public Relation Man's Best Friend," by Glen Perry. Public Relations Journal, April, 1955, pp. 3-4.

"Lawyers' Fees and Charges," by J. Adrian Rosenburg. Michigan State Bar Journal, April, 1955, pp. 16-23.

"Legal Ethics," by A. R. Lamp. The Journal of the Bar Association of the State of Kansas, May, 1955, pp. 363-368.

"Negligence or Incompetence of an Attorney as Grounds for Disbarment or Suspension," Note by James E. Murray. Notre Dame Lawyer, March, 1955, pp. 273-284.

"Newspapers and the Courts," by Marcus D. Gleisser. Cleveland-Marshall Law Review, Winter, 1954, pp. 156-172.

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"The Public Relations of the Legal Profession: A Report," by Edson L. Haines. The Canadian Bar Review, May, 1955, pp. 575-594.

"The Responsibilities of the Organized Bar," by Erle Stanley Gardner. The Ohio Bar, May 30, 1955, pp. 583-594.

"Social Security for Lawyers," by Arthur Larson and Allan L. Oliver. South Dakota Bar Journal, April, 1955, pp. 24-37.

"Symposium on Law and Medicine," Journal of Public Law, Fall, 1954.

Civil Procedure

"Judicial Regulation of Procedure," Comment by Dan Byron Dobbs. Arkansas Law Review, Spring, 1955, pp. 146-162.

"A Modern Procedure for New York," by Charles E. Clark. New York University Law Review, June, 1955, pp. 1194-1207.

"Origin and Sources of the Federal Rules of Civil Procedure," by Alexander Holtzoff. New York University Law Review, May, 1955, pp. 1057-1080.

"Preparation of the Medical Aspects of a Personal Injury Case," by Theodore T. Sindell. Law Review Digest, March-April, 1955, pp. 39-49.

Court Organization

"One Hundred Fifty Years of Official Law Reporting and the Courts in New York," by John H. Moore. Syracuse Law Review, Spring, 1955, pp. 273-306.

"Proceedings in a Magistrate's Court under the Laws of New York," by Raphael R. Murphy. Fordham Law Review, Spring, 1955, pp. 53-70.

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6. Privately published by the author, Thomas P. Monahan, 3159 Tennyson Street, N.W., Washington, D. C., February, 1955. Mimeographed and paper bound, 27 pages. 25 cents.

7. New York: Research Division of the New School for Social Research, 1955. Paper bound, 51 pages.

8. United Nations Publication ST/SOA/SD/2, distributed in this country by Columbia University Press, New York. Paper, 92 pages, 75 cents.

9. Paris: U.N.E.S.C.O.. 1954. For sale in this country by Columbia University Press, New York. Cloth. 136 pages, $1.00.

10. New York: Library Publishers, Inc., 8 West 40th St., 1954. Cloth, 362 pages, $3.75.

"The Record of the New Jersey Courts in the Sixth Year under the Constitution of 1947," by Arthur T. Vanderbilt. Rutgers Law Review, Spring, 1955, pp. 489-496.

"Symposium on the Work of the Louisiana Supreme Court for the 1953-1954 Term," Louisiana Law Review, February, 1955, pp. 255-402.

"The United States Customs Court—Its History, Jurisdiction and Procedure," by Jed Johnson. Oklahoma Law Review, November, 1954, pp. 393-415.

Criminal Procedure

"Character of the Accused in New York: Practical and Theoretical Considerations," by Jerome Prince. New York Law Forum, March, 1955, pp. 32-45.

"Crime and Juvenile Delinquency: Two of Our Greatest National Problems," by Julius H. Miner. American Bar Association Journal, July, 1955, pp. 599-602 & 662-663.

Any book reviewed here or in any other issue of this Journal, or any other book in the field of judicial administration, may be ordered directly from the American Judicature Society, 1155 East Sixtieth Street, Chicago 37, Illinois. We also will be glad to procure for you, at regular single-copy prices, copies of periodicals containing any of the articles here listed.

"District Court Judges' Suggestions to Trial Lawyers —Practicing Lawyers' Suggestions to District Judges." The Journal of the Bar Association of the State of Kansas, May, 1955, pp. 317-333.

"The Finished Trial Lawyer," by P. W. Lanier, Sr. North Dakota Law Review, April, 1955, pp. 147-159.

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"Motion for Acquittal in Federal Criminal Procedure: Successor to Directed Verdict," by Lester B. Orfield. Temple Law Quarterly, Winter, 1955, pp. 400-424.

"The New York Penal Law and Theories of Punishment," by Orvill C. Snyder. Brooklyn Law Review, December, 1954, pp. 12-19.

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"The Administration of Justice in a 'People's Democracy'," by Eduard Taborsky. The American Political Science Review, June, 1955, pp. 402-415.

"German Criminal Procedure: The Position of the Defendant in Court," by Hermine Herta Meyer. American Bar Association Journal, July. 1955, pp. 592-594 & 666-668.

"Korean Law and Lawyers: The New Korean Legal Center," by Robert G. Storey. American Bar Association Journal, July, 1955, pp. 629-630 & 641.

Judicial Administration

"Essentials of a Modern State Judicial System," by Laurance M. Hyde. Notre Dame Lawyer, March, 1955, pp. 227-244.

"The Idea of a Ministry of Justice Considered and Its Function Distributed," Arthur T. Vanderbilt. New York State Bar Association—Proceedings of the Seventy-Eighth Annual Meeting, January, 1955, pp. 152-185.

Jury System

"Challenging the Social Composition of Federal Juries in Colorado," by Harry K. Nier, Jr. Dicta, May-June, 1955, pp. 189-202.

"The Grand Jury—Its Role and Its Powers," by Irving R. Kaufman. Federal Rules Decisions, July, 1955, pp. 331-336.

"Secrecy and the Grand Jury in South Carolina," Note by J. Reese Daniel. South Carolina Law Quarterly, Spring, 1955, pp. 455-462.

Legal Aid

"Lawyer Referral Service," by J. C. Ruppenthal. The Journal of the Bar Association of the State of Kansas, May, 1955, pp. 377-379.

"Legal Aid Abroad and Local: Britain's Socialized Law;* Legal Aid in Cleveland," by Henry Gemmill and Cleveland Community Chest. The Cleveland Bar Association Journal, June, 1955, pp. 119 and 126-129. (*Reprinted from The Wall Street Journal, April 6, 1955.)

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Frederick G. Hamley

To Promote the Efficient Administration of Justice

I have no thought that men are made moral by the mere formulation of rules of conduct no matter how solemnly bar associations may pronounce them, or that they may be made good by mere exhortation. Men serve causes because of their devotion to them.

HARLAN FISKE STONE

LATE CHIEF JUSTICE OF
THE UNITED STATES

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